

February 9, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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JOHN CORNYN  
Attorney General

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Ms. Judith Hunter  
Paralegal  
City of Georgetown  
City Attorney's Office  
P.O. Box 409  
Georgetown, Texas 78627-04097

OR99-0373

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123298.

Section 552.301(a) of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; *see* Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that the information must be released to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', is written over a horizontal line.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 123298

Enclosures: Submitted documents

cc: Ms. Betty Sherouse  
400 C Algeria Drive  
Georgetown, Texas 78628  
(w/o enclosures)



February 9, 1999

Ms. Regina Atwell  
Assistant City Attorney  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR99-0375

Dear Ms. Atwell:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123099.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that the requested information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that

assumption, the requested information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) at 2 (construing predecessor statute). Accordingly, you must not release the requested information to the requestor.<sup>1</sup>

In light of our conclusion under section 552.101, we need not address the applicability of other exceptions, if any. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 123099

Enclosures: Submitted documents

cc: Mr. A.C. Bennett  
P.O. Box 1625  
Burleson, Texas 76097  
(w/o enclosures)

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<sup>1</sup>We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(f) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.